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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 28th June 2007

No.8230-1i/1-(B)-50/2005/L.E.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the award dated the 5th May 2007 in I.D. Case No. 68/2005 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the Sub-Divisional medical Officer, Athagarh and its workman Smt. Sukanti Roul, Ex-sweepress was referred for adjudication is hereby published as in the schedule below:—

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR
INDUSTRIAL DISPUTE CASE No. 68 of 2005

Dated the 5th May 2007

Present:

Shri S.K. Mohapatra, O.S.J.S. (Jr.Branch),
Presiding Officer,
Labour Court,
Bhubaneswar.

Between:

The Management of
Sub-divisional Medical Officer,
Athagarh.

... First-Party—Management

And

Smt. Sukanti Roul,
Ex-Sweepress.

... Second-Party — Workman

Appearances :

Dr. R. K. Pati.

... For First-Party—Management

Smt. Sukanti Roul.

... For Second-Party—Workman herself

AWARD

The Government of Orissa, Labour & Employment Department referred the present dispute between the Management of Sub-Divisional Medical Officer, Athagarh and Smt. Sukanti Roul, Ex-Sweepress under Notification No. 1057/L.E., dated the 31st January 2003 vide Memo No. 9247(5)/L.E., dated the 29th October 2005 for adjudication by this Court.

2. The terms of reference by the State Government is as follows :

“ Whether the termination of services of Sukanti Roul, contingent Mannual Labour (Sweepress) with effect from the 30th May 2004 by the Sub-divisional medical Officer Athagarh, Dist. Cuttack is legal and/or justified ? If not, to what relief is the workman entitled ?”

3. Shorn of all unnecessary details, the case of the workman is that the workman was working under the Management since the 13th December 2001 to 30th May 2004 as a Sweeper and was discharging her duties and respoonsibility with utmost sincerity. On 30th May 2004 when the workman demanded her arrear dues, her service was terminated by way of refusal of employment and in her place another workman Smt. Susama Naik was engaged. During her service period, the workman was working continuously under the Management without any break. The action of the Management in refusing employment to the workman is diseriminatory and arbitrary and amounts to unfair labour practice. On these averments, the workman has claimed her reinstatement in service with full back wages.

4. The Sub-divisional Medical Officer, Athagarh who is the Management in this case, in his written statement has contended that the entire procceding in the instant case is misconceived and the workman namely Smt. sukanti roul has no locus-standi to file such a case under any provisions of the Industrial Disputes Act, 1947. The Management had never employed the workman at any time and therefore, there was no relationship of employer and employee between them. In the written statement it is further contended that the workman was working on temporary basis for two hours in the morning and for only one hour in the evening and for her part time work she was being paid for the time she worked at the Athagarh Hospital. since there were complaint against the workman regarding her behaviour the workman was dis-engaged from service and in her place another lady was engaged as part time worker to clean the Hospital. It is contended that the workman is not entitled to any relief whatsoever under any provisions of the Industrial Disputes Act, 1947.

5. On the aforesaid pleadings of the parties, the following issues have been framed for determination.

ISSUES

(i) Whether the termination of services of Sukanti roul, Contingent Mannual Labour (Sweeper) with effect from the 30th May 2004 by the Sub-Divisional medical Officer, Athagarh, Dist. Cuttack is legal and/or justified ?

(ii) If not, to what relief is the workman entitled ?

6. The workman has examined herself as W.W.1. In her evidence W.W.1 has simply stated that she was working as Sweeper under the Management from the year 2001 to the year 2004. According to W.W.1 for the first five months she was not given any salary and thereafter she was given salary at the rate of Rs. 30/- per day. Further evidence of W.W.1 is that when she asked for payment of first five months, her service was terminated by way of refusal of employment. According to W.W.1 she was putting her signature regularly in the attendance register of the Hospital. Such oral evidence of W.W.1 has not been supported by any documentary evidence. W.W.1 has not proved any document to show that she had been appointed at the Sub-Divisional hospital, Athagarh since the year 2001 or that she was working continuously within the meaning of Section 25-B of the Industrial Disputes Act, 1947. W.W.2 is one stationery shop owner at Athagarh who has simply stated that he had seen the workman working as a Sweeper in the Hospitals at Athagarh since 2001 but in the cross-examination W.W.2 has admitted that he did not know about the employment of the workman or about her salary. W.W.3 is a retired Staff Nurse. In her evidence W.W.3 has stated that the workman was working as a Sweeper since 13th December 2001 and that she was still working as such till 30th April 2004. In her cross-examination W.W.3 has admitted that the workman was not a regular staff and she was only a part time Sweeper. Further evidence of W.W.3 is that she could not say about the working hour of the workman and that she had not idea about any appointment order of the workman. Thus there is no cogent evidence to show that the workman had been appointed to do full time work under the Management since the year 2001 or that she was working continuously within meaning of Section 25-B of the Industrial Disputes Act, 1947.

7. In his evidence the Sub-Divisional Medical Officer of Athagarh has examined himself as M.W.2 and has stated that the workman had been engaged as part time Sweeper on daily wage basis of Rs. 30/- to work for two hours in the morning time and for one hour in the after-noon for cleaning the cabins of the Hospital. The workman was never a regular employee of the Hospital. M.W.2 in his evidence has further stated that the workman had never worked for 240 days during any year during the period she was working. M.W.1 who is a Retired Pharmasist in his evidence has categorically stated that the workman was working as a part time Sweeper of the Hospital and that she was working two hours in the morning and for one hour in the evening. Although it is suggested to both the M.Ws.1 and 2 that the workman was working for more than 8 hours a day but there is no material on record to substantiate such a claim.

8. Thus from the evidence on record it is quite clear that the workman was only a part time worker working only three hours a day and she had never worked continuously under the Management within the meaning of Section 25-B of the Industrial Disputes Act, 1947. Therefore, the workman is not entitled to any of the benefits enumerated under Section 25-F of the Industrial Disputes Act, 1947.

9. Hence Ordered :

The termination of service of the workman with effect from 30th May 2004 by the Management by way of refusal of work is neither illegal nor unjustified and therefore, the workman is not entitled to the benefits of reinstatement in service or to the benefit of any back wages.

The reference is answered accordingly.

Dictated and corrected by me.

S.K. Mohapatra
5-5-2007
Presiding Officer,
Labour Court,
Bhubaneswar.

S.K. Mohapatra
5-5-2007
Presiding Officer,
Labour Court,
Bhubaneswar.

By order of the Governor

N. C. RAY
Under-Secretary to Government